(4)

(4)

SINGLE BENCH

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION [C] NO. 6394 /2006 [S.B.]

PETITIONER PLAINTIFF :- Kumari Lal Munni Nirmam daughter of Shri Kasturam, aged 44 years, by caste-Unraw, resident of village Bilha, Dodkibhantha, Tahsil Bilha, Police station Bilha, District Bilaspur [C.G.].

VERSUS

RESPONDENTS DEFENDANTS :-

1] Ashok Kumar son of Parasram, aged about 50 years, by caste-Panjabi.

2] Smt. Rajrani wife of Ashok Kumar, aged about 40 years.

Both resident of village Bilha, Tahsil Bilha, District Bilaspur [C.G.].

OATH COMMISSIONER APARNA MALVIYA CG 16/11/06 Bilaspur Chhattisgarh

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

C.R. No. 6436/06 Shri M.K. Bhadauria

(44)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) No. 6394 of 2006.

Petitioner : Kumari Lal Munni Nirman

Versus

Respondents : Ashok Kumar and another

Post for order on 14th March, 2007

Sd/-
Satish K. Agnihotri
Judge

(45)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (C) No. 6394 of 2006.

Petitioner : Kumari Lal Munni Nirman

Versus

Respondents : Ashok Kumar and another

Present: Shri M.K.Bhaduri, Advocate for the petitioner.
Shri B.D.Guru, Advocate for the respondents.

ORDER
(Passed on 14th of March, 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner challenges the legality and validity of order dated 7.11.2006 (Annexure P/5) passed by the 8th Civil Judge Class II, Bilaspur in Civil Suit No. 44-A/2006 whereunder the application filed by the petitioner (petitioner-plaintiff) under section 65 of the Evidence Act, was rejected.

2. The facts in nutshell are that the petitioner-plaintiff filed a civil suit for permanent injunction against the respondents-defendants to the effect that the disputed property be not alienated to any third party and no step be taken for sale of the said disputed property. The plaintiff further filed an application under section 65 of the India Evidence Act, 1870 that the respondents be directed to produce

original notarized sale document which allegedly was in possession of the respondents. The learned Civil Judge Class II, vide order dated 7.11.2006 (impugned herein) rejected the application on the ground that the respondents denied possession of any such document and photo-copy of the said document dated 10.08.2002 cannot be accepted as secondary evidence.

3. The learned counsel appearing for the petitioner submits that the learned Civil Judge Class II has not exercised its jurisdiction properly by declining to accept the said document for collateral purposes.

4. Shri B.D.Guru, learned counsel appearing for the respondents, per contra submitted that the said photo copy of the document dated 10.08.2002 which was sought to be accepted, was neither mentioned in the plaint nor there was any averment to that effect in the plaint. The submission of the petitioner to the effect that the original is in possession of the respondents have not been proved by the petitioner which is the basic requirement of section 65 of the Evidence Act.

5. Heard the learned counsel appearing for the parties and perused pleadings and the documents appended thereto. Admittedly, the petitioner has failed to prove the existence of any document in possession of the respondents as alleged by him. The photocopy of the notarized document is not as per requirement in law to describe the same as sale agreement. The High Court of Orissa at Cuttack in Chandra Shekhar Pati and another Vs. Ahalya Devi and others[1], AIR

1974 Orissa 199 (V 61 C 64) held that if the existence of a document is proved and the same could not be produced on account of death of the defendant, the secondary document of such evidence is admissible in evidence.

6. In another decision, Ishwar Das Vs. Muralidhar Rai[2] AIR 1992 Orissa 170 held as under:

> ".....In deciding the intention of the parties as to the time of passing of title, the document under which the properties were intended to be sold if unambiguous, remains the sole criterion. The factum of passing of consideration may be disputed and extraneous evidence may be admissible for determining that issue, but the terms of the contract as to the time of passing of title will be proved from the document alone if the terms are clear and unambiguous. If the terms are indecisive and ambiguous, then only the Courts will take into consideration other extraneous circumstances."

7. In the present case, there is no averment that the original document could not be produced on account of the death of the owner of the document. Even otherwise, such documents are prepared in duplicate and a copy of the same is retained by both the parties. The petitioner can prove the facts by other evidence also. Thus, rejection of the application for accepting a photocopy of the said document dated 10.08.2002 as secondary evidence is just and proper.

8. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of

(48)

the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

9. Applying the above settled principles of law to the facts of the present case, it does not warrant to interfere with the decision passed by the Court below.

10. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

1. AIR 1974 Orissa 199 (V 61 C 64)
2. AIR 1992 Orissa 170

Amit